

**MINUTES OF THE OPEN SESSION  
OF THE RHODE ISLAND ETHICS COMMISSION**

**October 18, 2011**

**The Rhode Island Ethics Commission held its 15th meeting of 2011 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, October 18, 2011, pursuant to the notice published at the Commission Headquarters, the State House Library, and electronically with the Rhode Island Secretary of State.**

**The following Commissioners were present:**

**Ross Cheit, Chair John D. Lynch, Jr.\***

**Frederick K. Butler Edward A. Magro**

**Mark B. Heffner\*\* James V. Murray**

**John M. LaCross**

**Also present were Edmund L. Alves, Jr., Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Staff Attorneys Jason Gramitt, Nicole B. DiLibero and Amy C. Stewart; and Commission Investigators Steven T. Cross, Peter J. Mancini and Gary V. Petrarca.**

**At 9:00 a.m. the Chair opened the meeting. The first order of**

**business was a motion to approve minutes of the Open Session held on October 4, 2011. Upon motion made and duly seconded, it was unanimously**

**VOTED: To approve minutes of the Open Session held on October 4, 2011.**

**ABSTENTION: Edward A. Magro**

**The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date. The first advisory opinion was that of:**

**Edward F. Yazbak, CPA, MST, a member of the North Smithfield Town Council, a municipal elected position, requesting an advisory opinion regarding whether he may participate and vote in the Town Council's consideration of matters relating to a zoning change for a proposed elderly housing development, for which his business associate has been engaged to provide architectural services that include appearances before the Town Council.**

**Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. Staff Attorney Stewart explained that because the Petitioner's individual advisory opinion**

request contained two separate issues, the staff elected to draft two separate advisory opinions. Upon motion made by Commissioner Magro and duly seconded by Commissioner Butler, it was unanimously

**VOTED:** To issue an advisory opinion, attached hereto, to Edward F. Yazbak, CPA, MST, a member of the North Smithfield Town Council.

The next advisory opinion was that of:

Edward F. Yazbak, CPA, MST, a member of the North Smithfield Town Council, a municipal elected position, requesting an advisory opinion regarding whether he may participate and vote in the Town Council's consideration of matters relating to the approval of a condominium development project, given that his business associate has been engaged by the developer to serve as an architect on a different real estate development project.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present.

\*Commissioner Lynch arrived at 9:08 a.m.

The Petitioner explained that he had a hard time reconciling the result of these two advisory opinions given that the first requires him to recuse but the second permits him to participate. He said that in

reality he may decide to recuse from this matter even though the advisory opinion permits him to participate. Chair Cheit replied that the Petitioner can still recuse even if the Commission issues this advisory opinion. Chair Cheit added that if the Commission adopts this advisory opinion, the Petitioner will have safe harbor from a complaint on this issue. In response to the Petitioner, Chair Cheit said that this advisory opinion is strictly limited to the facts therein and that if the facts change, the Petitioner should seek further advice from the Commission.

**\*Commissioner Heffner arrived at 9:11 a.m.**

In response to Commissioner LaCross, Staff Attorney Stewart clarified that the Petitioner is required to recuse from the matters relevant to the first advisory opinion issued today, which the Petitioner referred to as Phase III. She stated that this advisory opinion permits the Petitioner to participate in the Phase II issue currently before the Town Council, given that it is sufficiently distinct from the matter discussed in the first advisory opinion. Upon motion made by Commissioner Butler and duly seconded by Commissioner Murray, it was unanimously

**VOTED: To issue an advisory opinion, attached hereto, to Edward F. Yazbak, CPA, MST, a member of the North Smithfield Town Council.**

**The next advisory opinion was that of:**

**Samuel D. Zurier, Esq., a member of the Providence City Council, a municipal elected position, requesting an advisory opinion regarding whether his business associate may serve as a hearing officer for the Providence School Department, and also whether the Petitioner may participate in the City Council's review and vote on the School Department's budget after his business associate has been engaged by the School Department.**

**Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. In response to Commissioner Heffner, the Petitioner replied that in his experience there has been no occasion to vote on a particular School Department budget line item. The Petitioner stated that the City Council takes a single up or down vote on the School Department's budget. Commissioner Heffner observed that the Petitioner's participation in this matter is even farther removed because the City Council only engages in an up or down vote to approve or deny the School Department's budget.**

**The Petitioner stated that he valued the guidance of the Ethics Commission on this matter given the politics surrounding City Council activities. Chair Cheit stated that even though the Petitioner probably knew that he could participate in this matter, the Commission is happy to provide formal guidance through the advisory opinion process. Upon motion made by Commissioner**

**Heffner and duly seconded by Commissioner Magro, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Samuel D. Zurier, Esq., a member of the Providence City Council.**

**At approximately 9:24 a.m., upon motion made by Commissioner Magro and duly seconded by Commissioner Butler, it was unanimously**

**VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4), to wit:**

**a) Motion to approve minutes of Executive Session held on October 4, 2011, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).**

**The Commission reconvened in Open Session at approximately 9:25 a.m. .**

**Chair Cheit reported that the Commission took the following action in Executive Session: unanimously voted to approve the minutes of the Executive Session held on October 4, 2011.**

**The next order of business was the Director's Report. Executive Director Willever reported that there are thirteen complaints pending: nine non-filing complaints and four conflict of interest complaints.**

He stated that there are three advisory opinions pending and that four formal APRA requests were granted since the last meeting. Executive Director Willever also reported that the Staff has implemented a formal APRA request policy which is now available on the Commission's website. He added that Staff Attorney Stewart held an APRA training session for all Staff members in conjunction with the implementation of this new policy. In response to Commissioner Heffner, Staff Attorney Gramitt replied that the Commission now has wireless internet access.

The next matter was New Business. Chair Cheit acknowledged receipt from the Commission's independent legal counsel of a proposed Decision and Order in In re: Joseph S. Larisa, Jr., Complaint No. 2010-2. Upon consensus of the Commissioners, Chair Cheit said that he will give the other Commissioners one week to send any comments on the decision to him, which he will collect and pass along.

Chair Cheit asked Staff Attorney Gramitt if there were any regulatory matters that the Commission should consider. Staff Attorney Gramitt replied that Regulation 5002, which involves additional circumstances warranting recusal, could use an update and some clarification. He stated that it could also be an opportunity to add some potential exceptions. Chair Cheit, with the agreement of the Commissioners, directed the Staff to put the matter on the agenda for the next meeting.

**Chair Cheit noted that going forward a meeting should be postponed if the only matters are a few advisory opinions and there is no urgency.**

**At 9:29 a.m. upon motion made by Commissioner Butler and duly seconded by Commissioner Lynch, it was unanimously**

**VOTED: To adjourn.**

**submitted,**

**Respectfully**

**Harsch**

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**J. William W.**

**Secretary**